

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Somos, Inc. Petition for Declaratory Ruling	)	WC Docket No. 95-155
	)	
Regarding Registration of Text-Enabled	)	WT Docket No. 08-7
	)	
Toll-Free Numbers	)	
	)	

**ZIPWHIP, INC. REPLY IN OPPOSITION TO  
SOMOS, INC. PETITION FOR DECLARATORY RULING**

Zipwhip, Inc. (Zipwhip), by and through undersigned counsel, submits its reply to comments on Somos, Inc.'s (Somos) petition for declaratory ruling regarding the registration of text-enabled toll-free numbers.<sup>1</sup> Many comments underscore the fact that as a threshold matter, Somos' request is a rulemaking petition in disguise and should be dismissed on procedural grounds. Further, as discussed in detail below, claims of insufficient processes and market harm because of Zipwhip's operations, made by entities who stand to gain financially if the petition is approved, are false and misleading. The fact is the toll-free texting market is still too nascent to justify regulatory intervention. Granting Somos' petition would likely result in harm to the consumer interest and the emerging texting on toll-free industry.

---

<sup>1</sup> Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, WC Docket No. 95-155 (filed Oct. 28, 2016) (Somos Petition). *See* Public Notice, Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, DA 16-1259 (rel. Nov. 4, 2016). The Public Notice requests comment be filed in both WC Docket No. 95-155 and WT Docket No. 08-7.

## **I. SOMOS' PETITION SEEKS NEW RULES, NOT A DECLARATORY RULING**

Many of the comments in response to Somos' petition agree with Zipwhip that Somos is indeed seeking new rules not a clarification of existing rules. In its opposition, Zipwhip emphasized that Somos' petition was procedurally defective because it clearly seeks changes to existing rules, which is inapposite of the objective of a declaratory ruling.<sup>2</sup> Both AT&T and CTIA raise concerns similar to those of Zipwhip regarding the impropriety of Somos' chosen procedural method of a petition for declaratory ruling.<sup>3</sup>

In its comments, AT&T stated “[a]s a threshold matter, Somos' Petition is a clear misuse of the declaratory ruling process.”<sup>4</sup> Consistent with Zipwhip, AT&T emphasized that the Commission does not regulate the text-enabling of any numbers nor provide for RespOrgs or Somos to have any role in the use of numbers for text messaging services.<sup>5</sup> Commission rules authorized a database for managing allocation of toll-free numbers for voice services, but Somos' Text and Smart Services (TSS) registry “is a new product that is ‘adjunct’ to the SMS/800 database established pursuant to Commission rule.”<sup>6</sup> Somos' request deviates significantly from the Commission's historical purpose in establishing the SMS/800 database and established understanding of its role in the toll-free number ecosystem. “That role — assigning and administering toll-free numbers—is fundamentally different from the role Somos

---

<sup>2</sup> Opposition of Zipwhip, Inc., WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016).

<sup>3</sup> See Comments of AT&T Services, Inc., WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016); Comments of CTIA, WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016).

<sup>4</sup> AT&T Comments at 1.

<sup>5</sup> See *id.* at 3.

<sup>6</sup> See CTIA Comments at 9. Somos' product was created voluntarily, not as it was with the SMS/800 database, as a result of a regulatory mandate. See Zipwhip Opposition at 13.

seeks to extend to RespOrgs—the administration of how already assigned numbers are used by a subscriber,”<sup>7</sup> observed AT&T.

Additionally, CTIA notes that texting is an information service and “Somos is asking the Commission to impose a specific Title II regulatory structure on the process for enabling toll free numbers for . . . text messaging, beyond the four corners of any existing rules.”<sup>8</sup> Zipwhip similarly highlighted that unless the Commission determines that texting is a Title II telecommunications service it is nonsensical to assert that the Commission’s telecommunications regulations are applicable to texting including toll-free texting.<sup>9</sup> Indeed, a rule change in accordance with Somos’ request would represent such a significant regulatory shift that it would have to be granted in a rulemaking proceeding.

Furthermore, even comments by supporters of Somos’ position demonstrate the procedural flaws in Somos’ request. Centurylink, while supportive of parts of the request, explicitly stated that the issue of requiring registration before text-enabling a number is not suitable for a declaratory ruling because “it is unclear what statute, rule or Order pertains to the creation of a registry regarding toll-free numbers and texting.”<sup>10</sup> Other commenters engaged in discussions that indicate an intent for new rules. For example, Twilio *et al.* suggest that the Commission should apply existing numbering regulations to the toll-free texting ecosystem

---

<sup>7</sup> AT&T Comments at 3-4.

<sup>8</sup> CTIA Comments at 9.

<sup>9</sup> See Zipwhip Opposition at 4.

<sup>10</sup> See Comments of Centurylink, WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016) at 2 (“To the best of CenturyLink's knowledge, there are no pertinent statutes, rules or Orders with respect to the matter.”).

while acknowledging that this would be an expansion beyond what the rules currently address.<sup>11</sup> Notably, Twilio *et al.* offer no citation to support their claim that current rules mandate that an entity administer numbers for messaging.<sup>12</sup> If there were a mandate from current rules, one would expect Twilio *et al.* to have a citation to support the assertion.

Even Somos itself has previously acknowledged that text messaging is not an area that is regulated in the same way as voice communications.<sup>13</sup> During a March 2016 meeting of the North American Numbering Council, Somos President, Gina Perini, acknowledged that the guidelines for text-enabling toll-free numbers are industry standards, not FCC mandates.<sup>14</sup> She further explained:

[T]his is an industry discussion and this is an industry solution. ...  
**As we noted, this is not a regulated area per se.** I think that the industry has a very good set of guidelines that CTIA has put together, and I would hope that the industry would follow that and come together on those.<sup>15</sup>

Speaking of the TSS registry, Ms. Perini acknowledged that the TSS is a voluntary registry and that, under current law, “it’s not a mandated service so we can’t make people do it [use the

---

<sup>11</sup> See Comments of Aerialink Inc., CallFire, Inc. and Twilio Inc., WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016) (Twilio *et al.* Comments) at 1.

<sup>12</sup> See *id.* at 3.

<sup>13</sup> See North American Numbering Council (NANC), Meeting Transcript (March 24, 2016).

<sup>14</sup> *Id.* at 54 (“[T]he guidelines provided are industry solutions. There is no mandate per se and the FCC has not taken action.”).

<sup>15</sup> *Id.* at 54-55 (emphasis added).

registry].”<sup>16</sup> Seven months later, however, Somos reversed course and claims that FCC rules mandate use of the voluntary registry after all.

Commenters, including those supportive of Somos’ claims, demonstrated that there are no rules that currently address or relate to the issue of texting for toll-free numbers. The Commission’s current regulations do not address the matter of texting on toll-free numbers and there has been no comprehensive discussion on the record to justify the Commission granting Somos’ request. Somos is proposing new rules on a market that has not previously been the subject of any Commission rules. Therefore, independent of its lack of merit, Somos’ request for a declaratory ruling is procedurally deficient and should be dismissed.

## **II. RESPORG CLAIMS OF HARM IN THE CURRENT MARKET REMAIN IN THE REALM OF THE THEORETICAL**

The ability to text to toll-free numbers and the related marketplace features are a recent development empowered by Zipwhip’s innovative routing infrastructure and growing industry adoption of the service as a consumer communication channel. As CTIA stated, the market for text-enabled toll-free numbers is experiencing rapid growth but “enabling toll free numbers for texting is still a nascent and developing service.”<sup>17</sup> Any Commission action relating to the text to toll-free market is premature.

A number of RespOrgs in asserting harms from current text to toll-free operations discuss only theoretical possibilities of unauthorized persons text-enabling toll-free numbers or cite instances that were manufactured through social engineering specifically to support Somos’

---

<sup>16</sup> *Id.* at 56.

<sup>17</sup> *See* CTIA Comments at 7.

position.<sup>18</sup> However, as Zipwhip explains in its white paper, the single documented incident identified by supporters of Somos' request resulted from specific targeted efforts on the part of Somos.<sup>19</sup> Analysts working on behalf of Somos used social engineering that caused an employee at one company, a reseller, to activate three numbers without sufficient validation. The matter was resolved with no consumers impacted and there is no evidence that consumers have ever been impacted by Somos' ploy. Zipwhip ensured the procedural gaps were quickly identified and appropriate action to resolve those issues have been taken. The fact is that the existing validation process has worked 100 percent of the time when followed correctly.

There is no epidemic of toll-free numbers being hijacked or text-enabled without the subscriber's authorization and intent. The true subscriber is the only individual that can provide clarity around the use and authorization of its number, contrary to what RespOrgs claim. Zipwhip agrees with CTIA that it would be "counterintuitive that business subscribers' interests would be served by [making] the voice RespOrg serve as a gatekeeper to the subscriber's decision."<sup>20</sup> RespOrgs are not in any better position to verify a toll-free subscriber's authorization to text-enable a toll-free number.<sup>21</sup> Centurylink raises the possibility of disputes about identity of the legitimate subscriber when a toll-free number is authorized for shared use

---

<sup>18</sup> See e.g., Comments of ATL Communications, WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016); Comments of Association of Toll Free Professionals, WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016).

<sup>19</sup> See *ex parte* filing of Zipwhip, Inc., Attachment – The Truth About Texting on Toll-Free, WT Docket No. 08-7 (Nov. 18, 2016).

<sup>20</sup> CTIA Comments at 11.

<sup>21</sup> See AT&T Comments at 7 ("The mere fact that RespOrgs can identify the subscriber of voice service for a toll-free number gives them no insight into whether that subscriber has authorized a messaging provider to add texting capabilities to that number.").

by different entities but contrary to their claim, requiring RespOrg involvement does not eliminate those issues.<sup>22</sup> A RespOrg may not know the details about who a toll-free subscriber has authorized to have shared use of the number. So, Somos' proposal will add complications to the verification process without any further certainty.

The truth is that the industry is doing a good job today of identifying the correct subscriber and verifying authorization. Those who criticize Zipwhip's procedures oversimplify them or ignore the multi-factor element of the process. Zipwhip, unlike Somos or its RespOrgs, recognizes that verification issues may arise with any process. Zipwhip's process, however, allows for continuous assessment and responsive updating to verification processes to deal with new challenges. By contrast, Somos' alternative would enshrine RespOrgs as a gateway with no guidance, no effective process for the RespOrg to verify the subscribers' choice and no procedure for other providers to challenge potential self-interested responses by RespOrgs.

### **III. GRANT OF SOMOS' PETITION WOULD IMPEDE SUBSCRIBER CHOICE, NOT ENHANCE IT**

As AT&T notes, Somos seeks an entirely new system wherein RespOrgs manage not just the assignment of numbers but how already assigned numbers are used. Such an approach would be contrary to the key principle that the toll-free subscriber or those they authorize should have authority over the numbers to which they subscribe.<sup>23</sup>

---

<sup>22</sup> See Centurylink Comments at 4.

<sup>23</sup> See *Transaction Network Services, Inc., TSYS Acquiring Solutions, LLC, and Electronic Payment Systems*, WC Docket No. 95-155, Declaratory Ruling LLC, 26 FCC Rcd 2109, 8 (concluding that "subscribers do have a controlling interest in their active numbers").

Granting the petition would present real harm to the text to toll-free market by making it more difficult and more expensive for businesses to enable their numbers. Somos' process would shift authority and decision-making to RespOrgs as well as layering in additional time and costs. Dynamic Vision, a messaging provider that allows subscribers to text-enable their toll-free numbers, explained that granting Somos' petition would undermine their business incentive to continue to invest in the text to toll-free market.<sup>24</sup>

As CTIA states, the Commission should be cautious about effectively creating a monopoly messaging registration rather than allowing the ecosystem to consider the most efficient and effective means to enable toll-free text messages.<sup>25</sup> Currently, the market is adequately and efficiently resolving any issues while empowering the subscriber to choose how they use all numbers and the entity they will use for toll-free messaging. AT&T is correct that imposing Somos' desired mandate on "a thriving and rapidly evolving texting market ... is both haphazard and potentially damaging to that market's growth."<sup>26</sup>

---

<sup>24</sup> See Comments of Dynamic Vision, WC Docket 95-155, WT Docket 08-7 (filed Dec. 5, 2016) ("Why would we continue to invest in selling toll free texting services only to hand valuable leads to a RespOrg that likely offers competitive services?").

<sup>25</sup> See CTIA Comments at 13.

<sup>26</sup> AT&T Comments at 8.



**IV. CRITICISMS OF ZIPWHIP'S ROLE AS AN INFRASTRUCTURE PROVIDER ARE FACTUALLY INCORRECT BUT, BEYOND THE SCOPE OF THE PETITION, ANYWAY**

Some commenters raise concerns about Zipwhip's role as an infrastructure provider. Claims that Zipwhip is concentrating market power or colluding with carriers for financial incentive are simply false and are beyond the scope of this proceeding.

Allegations of monopolistic behavior made by some commenters are incorrect and represent a flawed understanding of the state of the market. Zipwhip's position as an aggregator for most major carriers is merely a result of it being a technological innovator and first mover in this industry. It is common in emerging markets for a single company to initially play that role but it is not likely to be permanent and is not reflective of any market power or anti-competitive intent.

The business model in the text to toll-free industry is still being proven and there have not been significant profits for carriers or for Zipwhip. There are, however, no barriers to entry. Contrary to what is alleged by some commenters, Zipwhip's contractual arrangements with the carriers contain no exclusivity provisions and the carriers are free to consider other messaging providers. The fact is the strong buy-in to Zipwhip's service is a result of much diligent effort to get carriers onboard with this new service and provide a service that incorporates security protections for both toll-free subscribers and wireless customers who receive toll-free texts.

Nonetheless, these issues are irrelevant to the discussion at hand in this proceeding. Somos' petition asks only about registration of numbers and does not address the process of delivering texts to toll-free numbers. Nothing in the petition goes to the matter of Zipwhip's role

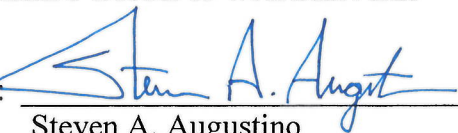
as an infrastructure provider for toll-free texting services. Therefore, the Commission may justifiably ignore commenters' claims regarding Zipwhip's role as an infrastructure provider.

## CONCLUSION

For the foregoing reasons, Zipwhip respectfully submits that Somos' Petition for Declaratory Ruling should be dismissed or denied.

Respectfully submitted,

KELLEY DRYE & WARREN LLP

By: 

Steven A. Augustino  
Avonne Bell  
KELLEY DRYE & WARREN LLP  
3050 K Street NW  
Suite 400  
Washington, D.C. 20007  
(202) 342-8400 (voice)  
(202) 342-8451 (facsimile)  
[saugustino@kelleydrye.com](mailto:saugustino@kelleydrye.com)

*Counsel for Zipwhip, Inc.*

December 20, 2016